

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

ONE WISCONSIN INSTITUTE, INC., *et al.*,

Plaintiffs,

v.

Case No. 15-CV-324-JDP

ANN S. JACOBS, Chair, Wisconsin
Elections Commission, *et al.*,

Defendants.

JUSTIN LUFT, *et al.*,

Plaintiffs,

v.

Case No. 20-cv-768-JDP

TONY EVERS, *et al.*,

Defendants.

JOINT STIPULATED PROPOSED SCHEDULE

Pursuant to this Court's July 30, 2021 Order, the parties respectfully submit this Joint Stipulated Proposed Schedule for the remainder of this case through trial. The chart below identifies the aspects of the schedule agreed upon by all parties and aspects of the schedule with which Plaintiffs and Defendants still disagree after negotiation with the agreed-upon dates bolded. Each side has also included its proposed schedule separately below, and with a brief explanation explaining the basis of their major disagreements.

Deadline	Plaintiffs' Proposed Date	Defendants' Proposed Date
Deadline to serve additional written discovery requests	August 13, 2021	same
Depositions begin	September 7, 2021	same
Plaintiffs' Expert Disclosures with Briefing in support of Expert Testimony	September 13, 2021	same
Briefing in opposition to Expert Testimony	September 24, 2021	September 30, 2021
Replies in support of expert testimony	September 30, 2021	November 7, 2021
Deadline to disclose potential fact witnesses	October 22, 2021	N/A (Defendants propose a trial witness list exchange on October 1)
Defendants Rebuttal Experts Disclosed	Within 30 days of Court ruling on admissibility of expert testimony if allowed	N/A
Plaintiffs' Expert Reports Due	November 2, 2021	November 19, 2021
Ruling on Plaintiffs' request for expert testimony	N/A (Court to rule on its own schedule shortly after briefing is completed)	Approximately November 15, or as soon thereafter as is convenient for the Court
All Fact Discovery completed	November 19, 2021	December 10, 2021
Defendants' Expert Reports Due	November 23, 2021	30 days after court decision on expert testimony (approx. December 15)
Plaintiffs' Expert Reply Reports Due ¹	December 7, 2021	14 days after Defendants' Expert Response Reports Due (approx. December 29)

¹ Plaintiffs wish to reserve the right to address any additional fact issues that arise between when Plaintiffs' initial expert report(s) are due and the end of fact discovery in a reply report in addition to any replies to Defendants' expert report(s).

Deadline	Plaintiffs' Proposed Date	Defendants' Proposed Date
Expert Discovery Close	December 21, 2021	14 days after Plaintiffs' Expert Reply Reports Due (approx. January 12, 2021)
Parties exchange proposed stipulated facts	January 14, 2022	November 19, 2021
Deadline to Disclose Fact Witnesses for Trial	January 14, 2022	October 1, 2021
Motions in limine due, including motions challenging admissibility of expert testimony²	January 17, 2022	same
Trial exhibit disclosures due	January 18, 2022	December 23, 2021
Parties exchange responses to proposed stipulated facts	January 21, 2022	November 24, 2021
Parties confer on proposed stipulated facts	January 25, 2022	December 1, 2021
Parties file statement of stipulated and disputed facts	January 28, 2022	December 10, 2022
Pretrial Order Due	January 28, 2022	same
Pretrial Conference	February 1, 2022 or as otherwise convenient for the Court	same
Trial	February 10-11, 9 a.m.	same

² Plaintiffs believe that motions in limine are unlikely to be needed including expert challenges given the Court's preliminary expert ruling. But in the event the Court disagrees, this deadline is acceptable to Plaintiffs, with responses due seven days later.

Plaintiffs' Proposed Schedule and Statement Regarding Areas of Disagreement

Deadline	Date
Deadline to serve additional written discovery requests	August 13, 2021
Depositions begin	September 7, 2021
Plaintiffs' Expert Disclosures with Briefing in support of Expert Testimony	September 13, 2021
Briefing in opposition to Expert Testimony	September 24, 2021
Replies in support of expert testimony	September 30, 2021
Deadline to disclose potential fact witnesses	October 22, 2021
Defendants Rebuttal Experts Disclosed	within 30 days of Court ruling on admissibility of expert testimony if allowed
Plaintiffs' Expert Reports Due	November 2, 2021
All Fact Discovery completed	November 19, 2021
Defendants' Expert Reports Due	November 23, 2021
Plaintiffs' Expert Reply Reports Due ³	December 7, 2021
Expert Discovery Close	December 21, 2021
Parties exchange proposed stipulated facts	January 14, 2022
Motions in limine due, including motions challenging admissibility of expert testimony ⁴	January 17, 2022
Trial exhibit disclosures due	January 18, 2022

³ Plaintiffs wish to reserve the right to address any additional fact issues that arise between when Plaintiffs' initial expert report(s) are due and the end of fact discovery in a reply report in addition to any replies to Defendants' expert report(s).

⁴ Plaintiffs believe that motions in limine are unlikely to be needed including expert challenges given the Court's preliminary expert ruling. But in the event the Court disagrees, this deadline is acceptable to Plaintiffs, with responses due seven days later.

Deadline	Date
Parties exchange responses to proposed stipulated facts	January 21, 2022
Parties confer on proposed stipulated facts	January 25, 2022
Parties file statement of stipulated and disputed facts	January 28, 2022
Pretrial Order Due	January 28, 2022
Pretrial Conference	February 1, 2022 or as otherwise convenient for the Court
Trial	February 10-11, 9 a.m.

Plaintiffs' proposed schedule represents a compromise in multiple respects, but the parties have been unable to reach agreement in several areas due to fundamental disagreements about: (a) the timing of expert reports and (b) the timing and sequence of disclosure of stipulated facts, trial witnesses, and exhibits lists.

In terms of expert reports, Plaintiffs understand from the last conference that the Court intends to issue a ruling as to whether expert testimony will be allowed promptly after the briefing is submitted, and our proposal is predicated on that understanding. With briefing complete by the end of September, providing the Defendants 30 days after the ruling in which to disclose an expert and until November 23 to produce an expert report provides more than ample time and leaves December available for expert depositions.

As to the disclosure of stipulated facts, trial witnesses, and exhibits, Plaintiffs have proposed a schedule fully in-line with most pretrial orders and one that provides a generous amount of time before trial to review, confer, and object in advance of what is only a two-day bench trial. Indeed, this Court's standard Procedure for Non-Jury Cases proceeds just as Plaintiffs propose,

calling for the exchange of exhibits, conferral as to written stipulations of facts, and finalization of trial witness lists at least two weeks before trial. *See* Procedure for Non-Jury Cases, Standard Attachments for Civil Cases Assigned to Judge Peterson at 37–38.⁵ The only difference is that Plaintiffs’ proposals would provide for even *more* than the two weeks’ notice contemplated in the standard procedure.

By contrast, Defendants propose a schedule that would require disclosure of a final trial witness list, proposed stipulated facts, and exhibits months before trial and while fact and/or expert discovery is still on going. This proposal reverses the normal sequence of the discovery process and turns standard pretrial practices on their head. Defendants’ reasons for this extreme departure do not survive the eyeball test.

In terms of trial witnesses, Defendants justify their position by arguing that they only wish to depose the witnesses Plaintiffs will call at trial and no more. Strategic decisions about which witnesses to call at trial often develop over the course of discovery and through deposition testimony, however, and cannot be made well-before the close of fact discovery. Plaintiffs have proposed instead to provide a carefully crafted and not unduly overinclusive list of potential witnesses by October 22—still over three months before trial with approximately a month to take any desired depositions. Defendants will have ample time to choose which potential witnesses they wish to depose with each side afforded the usual amount of time to decide upon its trial strategy.⁶

As to trial exhibits, Defendants’ rationale for their early deadline stems from concerns about having ample time to object to Plaintiffs’ exhibits, which they suggest were voluminous in previous trials. But given that this is only a two-day trial on narrow issues, an exhibit exchange

⁵ See https://www.wiwd.uscourts.gov/sites/default/files/Attachments_PTC_JDP.pdf.

⁶ Plaintiffs likewise need to decide now which of Defendants’ employees they need to depose without the benefit of any guidance from Defendants concerning which ones *they* intend to call at trial.

more than three weeks before trial with ten days to lodge objections should provide ample time to both parties.

Finally, as to stipulated facts, Plaintiffs agree with Defendants that they should work collaboratively to identify areas of agreement and narrow the scope of disputed material facts that the Court must evaluate at trial. But demanding those facts prior to the close of both fact and expert discovery will not aid the Court and instead would result in either numerous supplemental filings or an incomplete stipulated record.

Plaintiffs' proposal accords with typical pre-trial practice and provides more than sufficient time for both parties to take discovery and prepare for a two-day bench trial in an efficient manner.

Defendants' Proposed Schedule and Statement Regarding Areas of Disagreement

Deadline to serve additional written discovery requests	August 13, 2021
Depositions begin	September 7, 2021
Plaintiffs' Expert Disclosures with Briefing in support of Expert Testimony	September 13, 2021
Briefing in opposition to Expert Testimony	September 30, 2021
Deadline to designate fact witnesses for trial	October 1, 2021
Replies in support of expert testimony	November 7, 2021
Ruling on Plaintiffs' request for expert testimony	Approximately November 15, or as soon thereafter as is convenient for the Court
Parties exchange proposed stipulated facts	November 19, 2021

Plaintiffs' Expert Reports Due	November 19, 2021
Parties exchange responses to proposed stipulated facts	November 24, 2021
Parties confer on proposed stipulated facts	December 1, 2021
Parties file statement of stipulated and disputed facts	December 10, 2021
Defendants' Expert Response Reports Due	30 days after court decision on expert testimony (approximately December 15)
Plaintiffs' Expert Reply Reports Due	14 days after Defendants' Expert Response Reports Due (approximately December 29)
All Fact Discovery completed	December 10, 2021
Trial exhibit disclosures due	December 23, 2021
Expert Discovery Closes	14 days after Plaintiffs' Expert Reply Reports Due (approximately January 12)
Motions in limine due, including motions challenging admissibility of expert testimony	January 17, 2022
Pretrial Order	January 28, 2022 or as otherwise convenient for the Court
Pretrial Conference	February 1, 2022 or as otherwise convenient for the Court
Trial	February 10-11, 9 a.m.

Defendants request a schedule that facilitates an efficient trial and permits them to fully understand, and respond to, Plaintiffs' positions. The parties' scheduling disagreements center on four issues: (1) efficiently conducting depositions to minimize unnecessary discovery and making sure the parties have sufficient time to conduct what is needed; (2) timing expert disclosures so the parties do not need to retain experts and pay for reports that may never be used; (3) exchanging

exhibits with enough time to make any necessary objections and otherwise prepare for trial; and (4) ensuring adequate time to narrow the trial with stipulated facts. Each issue is briefly explained below.

1. Efficient witness disclosure and deposition timing. Defendants plan to conduct this stage of litigation efficiently, and do not intend to take broad discovery depositions. Defendants' current intention is to depose only those witnesses who Plaintiffs will call at trial. A key driver of that is knowing Plaintiffs' trial witness with enough time to prepare and to depose them. Defendants' schedule accomplishes that goal; witnesses are designated in October and fact discovery is complete in December. Plaintiffs' alternative is that their disclosure only includes potential witnesses, with less than a month before fact discovery closes. This alternative would require Defendants to depose all potential witnesses on an unnecessarily short schedule, which is far less efficient than focusing on only the necessary depositions with sufficient preparation time. Plaintiffs have had nearly a year with much of the updated discovery to determine who they might designate as trial witnesses, and they have provided no reasonable explanation why they need an additional two months to determine who they might call for trial.

2. Eliminating unnecessary expert reports. Defendants should not be required to pay for expert reports before a decision on which experts will be allowed. Defendants accordingly propose a schedule for disclosing reports that is tied to the Court's decision on what experts will be necessary. Plaintiffs' alternative of making Defendants' expert reports due before Thanksgiving could require Defendants to pay for, and disclose, expert reports that are never used in the case.

3. Timely trial exhibit disclosures. At each stage of this litigation, Plaintiffs have designated voluminous exhibits, including over 200 at the most recent preliminary injunction proceedings alone. (Dkt. 392–396, 401, 405, 416). Defendants' comparatively small litigation

team will need time to review trial exhibits, object if necessary, and prepare responsive evidence. Plaintiffs' proposal includes short timing for pre-trial exhibits, and a mere seven days for any objections. Defendants' alternative proposal will allow a reasonable amount of time to meaningfully review and respond to Plaintiffs' disclosures. Additionally, earlier disclosure will likely facilitate stipulations to facts at trial.

4. Meaningful factual stipulation to narrow contested trial issues. This case is unusual in how much legal and factual development is already complete. Defendants anticipate that the vast majority of matters that might be contested if this were an ordinary trial can be stipulated in what is now the third trial in this litigation. Defendants therefore propose that the parties exchange and discuss stipulated facts starting on November 19; far enough into discovery that the key facts will be known but well in advance of final trial preparation. This process is highly likely to narrow contested issues for both discovery and trial. Plaintiffs' counter-proposal, to exchange proposed stipulations a mere 3 weeks before trial, does not leave enough time for meaningful discussion and ensures that any preparation benefits are lost.

Dated this 13th day of August, 2021.

Respectfully submitted,

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